

REMARKS

Claims 1-40 were in the application as filed. The Examiner has required restriction between allegedly patentably distinct Species #1 (Figures 1-5), Species #2 (Figure 6-9), Species #3 (Figures 10-12), Species #4 (Figures 13-15), Species #5 (Figures 16-18), Species #6 (Figures 19-21), and Species #7 (Figures 22-25). The Examiner asserts that claims 1-4 and 28-40 are generic. Applicant respectfully requests that the Examiner consider the withdrawal of the restriction requirement in light of the arguments advanced herein. Alternatively, Applicant provisionally elects the claims of Species #1 with traverse.

Restriction Requirement

The Examiner has required restriction between alleged Species #1 (Figures 1-5), Species #2 (Figure 6-9), Species #3 (Figures 10-12), Species #4 (Figures 13-15), Species #5 (Figures 16-18), Species #6 (Figures 19-21), and Species #7 (Figures 22-25), each of which comprises a vehicular door handle assembly comprising a primary actuator movable between a latched position and an opened position, and a secondary actuator movable between a secure position for preventing movement of the primary actuator from a latched position to an opened position and a release position for enabling movement of the primary actuator from the latched position to the opened position. The restriction requirement is respectfully traversed as being improper.

Restriction may be required if two or more "independent and distinct" inventions are claimed in one application. 35 U.S.C. §121. Alleged Species #1- #7 have the unifying concept of a vehicular door handle assembly having a primary actuator and a secondary actuator, the secondary actuator movable between a secure position and a release position for selectively preventing and enabling the primary actuator to move from a latched position to an open position. The existence of this unifying concept is reinforced by the Examiner's recognition that claims 1-4 and 28-40 are generic to all the species.

As the Examiner is undoubtedly aware, 37 CFR 1.141(a) states:

Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

See, also, Manual of Patent Examining Procedure, §§806.04(a), 806.04(h). Thus, 37 CFR 1.141(a) recognizes that a single application can properly include claims to a reasonable number of species greater than one provided the application includes an allowable generic claim from which the species claims depend. This is precisely the situation with respect to the Application at issue. While no decision has yet been made concerning the allowability of the generic claim, the species claims must be examined if a claim generic to the species is allowed. *See, MPEP §809.02(c).*

Moreover, a search of the prior art would not be duplicative and Applicant is at a loss as to how the Examiner would be burdened by having to examine all the groups of claims since they relate to such intertwined subject matter.

There is good reason to maintain all species claims in the application for examination pending allowance of the generic claim. Each species operates in essentially the same general manner. The number of species is not unreasonable. Applicants submit that there is a high likelihood that claim 1 will be allowed. The burden of maintaining the claims in the application is negligible, and far outweighed by the burden of continuing examination of the withdrawn claims after allowance of the generic claim. Nevertheless, Applicants confirm a provisional election with traverse of alleged Species #1 (Figures 1-5).

Election of Species

Applicants provisionally elect alleged Species #1 (Figures 1-5), claims 1-15, 19, and 28-40, with traverse.

The Examiner states that 1-4 and 28-40 are generic. As the Examiner is undoubtedly aware, MPEP §809.02(c) states:

(B) When a generic claim is subsequently found to be allowable, and not more than a reasonable number of additional species are claimed, treatment shall be as follows:

(1) When all claims to each of the additional species are embraced by an allowable generic claim as provided by 37 CFR 1.141, applicant must be advised of the allowable generic claim and that **claims drawn to the nonelected species are no longer withdrawn** since they are fully embraced by the allowed generic claim. (Emphasis added.)

Upon the allowance of any of claims 1-4 or 28-40, Applicants will be entitled to consideration of dependent claims 16-18 and 20-27 as drawn to species which are non-elected as a result of the restriction requirement. *See, 37 CFR 1.146.*

CONCLUSION

If there are any outstanding issues which the Examiner feels may be resolved by way of telephone conference, the Examiner is cordially invited to contact the undersigned to resolve these issues. Early notification of allowability is respectfully requested.

Respectfully submitted,

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